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Exam No. _____

**750-001 Ethics
Summer 2011**

**UNM School of Law
Final Examination**

**Professor D. Stout
Tuesday: July 26, 2011
4:45-7:15 p.m. (150 mins.)**

Examination Format: Essay

Professor's Instructions

This is a **2 hour and 30 minute** final examination. The exam consists of three essay questions and 2 extra credit questions. The total number of points possible on the exam is 66. Each essay is worth 20 points—in other words each question is of equal weight so be sure to time yourself accordingly. Each extra credit problem is worth 3 additional points.

This exam is OPEN BOOK. You may refer to any print materials including your casebook, your rules book, your class notes, and your course outline. You may **NOT** use electronic databases.

In your answers, you are to apply the Model Rules and comments, relevant sections of the *Restatement* that you deem appropriate, cases, and ethics opinions to the facts. You should provide references to and analysis of relevant provisions of these authorities to demonstrate your reasoning and to support your conclusion. **Issues relating to attorney client privilege should be discussed with reference to the pertinent *Restatement* sections.**

To receive full credit for each question, you must identify the correct rule and offer relevant language or a paraphrase of language from the rule or the rule comments, state a definite conclusion or answer, and support your conclusion/answer through complete presentation of all steps in your reasoning and reference to relevant authority. References to case names and base rule numbers are sufficient as citation; reporter cites are not required. If you do not recall a rule number, you must specify the subject matter of the rule. In grading the exam I will also be looking for good organized analysis and presentation

Your answers are to be concise and directly relevant to the question asked or fact pattern provided. Rambling and imprecise answers will not receive full credit. **Be sure to respond to the call of the question.**

Essay Technical Instructions

Bluebooks for writing: using black or blue ink only, write on every-other line and only on the front side of each page. On the front cover of each bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

Laptop for typing:

1. Log off all programs that you are currently running or have opened!
2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "**Prepare to start new exam**" is marked and click, "**Next.**"
5. Enter your "**Exam ID**" number and confirm it.
6. Click the drop box next to "**Course**" and select your course and professor and confirm. Click, "**Next.**"
7. Optional choices screen: If you choose to change these options please do so. If not, click "**Next.**"
8. Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked "**Got it**" and click, "**Next.**"
9. Type "**Closed**" for exam mode, check the box below that to confirm and click, "**Next**"
10. At this point Exam4 will indicate "**Wait!**" in the lower right side of the screen.
WAIT!
11. The proctor will tell you when to click "**Begin Exam.**"
12. A "**Security Check**" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor
13. Use the Tools menu above and select "**Insert Answer Separation**" for a page break.

All Exam Takers

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed by the professor, please write them on the exam and do not sign your name

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the Proctor or the Registrar's Office (William or Ernest) at 277-2146/2147 or jackson@law.unm.edu or tafoya@law.unm.edu

You may **not** make/keep a copy of this exam! You are required to return this exam with your answer.

A five-minute warning will be given prior to the conclusion of the examination. When time is called, **STOP** immediately.

Bluebook (Writers): At this point immediately stop writing, close all blue books and gather up any materials. If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically** and follow either the Mac or Windows user directions below:

Mac users only:

- Wait for the airport icon to indicate you have reconnected to the wireless network.
 - If the “Check Network Connection” screen displays, select OK.
 - Use your Airport to reconnect to Lobo-Sec.
 - Reauthenticate using your browser.
- Return to Exam4 and select **Exam4 Save Options**, then **Submit Electronically**.
- You will receive a confirmation that your exam has been saved successfully. Click **I understand** and **OK**.
- Exit the exam by selecting **Exam4 Save Options, Exit**.
- If the exam **did not submit electronically**, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.
 - If the exam still did not submit electronically, contact an IT proctor

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

Windows users only:

- If the Status” window indicates a problem with submitting electronically (usually Error 12: No response), close the window with the Red X and select File and Save Options. Select Exit (don’t worry...the completed exam is saved to your hard drive). “Check Network Connection” screen displays, select OK.
 - Exit the exam by selecting **File and Save Options, Exit**.
 - Reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
 - Start Exam4 again. Choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code.
 - Click **Quit** to exit Exam4.
- Click the verification options and/or OK until you return to Exam4. Select **File and Save Options, Exit**.
- If the exam still did not submit electronically, contact an IT proctor.

If you have not already filled out the exam receipt, exit the room and fill out the receipt at the table(s) provided near the proctor(s), then proceed to the exam check-in table.

[Exam begins on the next page]

QUESTION NO. 1

Your client is the subject of an IRS investigation. He is being audited for the past five years. Of particular concern to you is how his tax accountant, who has fled the country, depreciated some investment properties in the Grand Cayman islands. Your client not only faces large fines and penalties for inaccurately stating taxable income for the past five years, but potential jail time for each violation. You understand federal income tax law inside and out, but are a little weak when it comes to accounting. You hire a CPA to examine the records and provide you with a forensic analysis of the accounting behind the allegedly fraudulent tax returns. The CPA will **not** be used as an expert witness but was retained only to help you understand the accounting issues.

You brief the CPA on the case in a discussion over the phone and then follow up with a detailed e-mail to the CPA, copy to the client. In the course of the CPA's work she interviews the client regarding some of the records. The interview takes place in the conference room of your office and your client's 16 year old son is present during the interview. Ultimately the CPA provides you with a detailed report that analyzes each transaction that will provide basis for the defense of your client. You send the report to your client who unbeknownst to you shares it with his brother who is a bookkeeper.

The IRS now seeks to discover any communications between you and the accountant. **Analyze (1) the applicability of the attorney client privilege to the IRS discovery request and (2) your ethical obligations, if any, implicated by the IRS discovery request. Do not consider or discuss the doctrine of attorney work product.**

QUESTION NO. 2

You are in your first month as a new associate after passing the bar. The senior managing partner comes into your office and closes the door. She tells you that she wants you to go and interview a critical witness that you know in high school. The witness is an employee of the defendant, a corporation. Your firm is going to depose this witness who, you are told has testimony that may be very important for your client's punitive damages claim. Defendant corporation is represented by counsel. You have some concern about the request, but are reassured by the partner that it is "ok." You arrange to meet your old high school friend and the first thing he says is "are you sure it is ok for me to talk with you about this case my boss is really worried about the claim." Despite your misgivings, you say "yes, it is ok I just want a little background information." You then fully interview your friend about his knowledge of the defendant corporation's safety practices. The lawyer for defendant learns about this contact and goes ballistic. He files a disciplinary complaint against you. **Discuss the Rules of Professional Conduct that are implicated here and whether you have any defenses to the disciplinary complaint.**

QUESTION NO. 3

You are the ethics counsel for your firm. Maria comes to your firm seeking representation in a lease/sale transaction. She is the lessee and purchaser of a small office building. The seller is Bicycle Bill. Your firm runs a conflicts check and determines that a recent hire, Lawyer A, worked for a firm that had represented Bicycle Bill in a number of business transactions, primarily having to do with the development of small strip malls. You further investigate and learn that Lawyer A did not have any direct responsibility in the representation of Bicycle Bill which was handled by other lawyers in Lawyer A's old firm. You discover, however, that Lawyer A and Bicycle Bill developed a friendship based on a common interest in cycling. You discover that they do a lot of cycling events together and have vacationed in the Pyrenees. Although Lawyer A denies that there is any romantic involvement, you have some concerns that the relationship of Lawyer A and Bicycle Bill may be more intimate than Lawyer A has acknowledged.

The senior partner of your firm wants to know whether the firm can represent Maria. Provide her with your analysis and conclusion.

EXTRA CREDIT NO. 1

The attorney client privilege is not a Rule of Professional Conduct. What is it?

EXTRA CREDIT NO. 2

The Rules of Professional Conduct that impose limitations on the representation of client in situations where there are conflicts serve three fundamental values. What are they?